



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P (MD) No. 621 of 2012

and

M.P (MD) Nos.1 and 2 of 2012

and

C.M.P (MD) No.12400 of 2019

1. Thaayee (Died)
2. Murugan
3. Karnan
4. Arjunan
5. P. Krishnan

... Petitioners/Respondents
Petitioners/Plaintiffs

(5th petitioner is brought on record as the legal heir of the deceased 1st petitioner vide order, dated, 02.07.2015 made in M.P(MD)No.1 of 2014)

Vs.

1. Sudalaiyandi Nadar (Died)
2. Ramakrishnan (Died)
3. Rajan
4. Sathasivam
5. Balakrishnan
6. Selvi
7. Devi (Died)
8. Lakshmi

... Respondents/Petitioners
Respondents/Defendants

9. S. Sekar
10. Minor S. Mourish
11. Minor S. Periyarshan

... Proposed Respondents

(R10 and R11 are minors, represented by their father as 9th respondent)

(R9 to R11 are brought on record as legal heirs of deceased R7 vide order, dated, 21.09.2020 made in C.M.P(MD)No.2896 and 4695 of 2020)

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India as against the fair and decreetal order in E.A.No.32 of 2011 in E.P.No.46 of 2002 in O.S.No.960 of 1995 on the



file of the I Additional District Munsif Court, Nagercoil, dated, 10.11.2011.

For Petitioners : Mr.S.Ramesh

For Respondents : Mr.R.T.Arivu Kumar
for Mr.R.Manimaran
for R3 to R6 and R8
No appearance
for R9

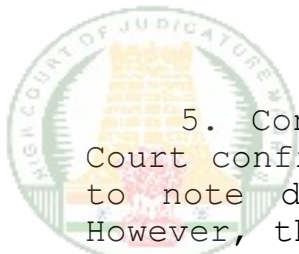
ORDER

This Civil Revision Petition has been filed challenging the order passed by the Executing Court, appointing one Mr.John Bino, as Advocate Commiossioner, to carry out the execution of the decree for recovery of possession granted by the trial Court and slightly modified by the first appellate Court. The Executing Court has cancelled the appointment of Mr.Thambi Raj as Advocate Commissioner and rejected his report and thereafter, one Mr.John Bino has been appointed as the Advocate Commissioner. Challenging the said order, this petition has been filed.

2. Though the revision has been filed on various grounds, when the revision petition is taken up for hearing, the learned counsel for the petitioners as well as the respondents submitted that the Advocate Commissioner appointed by the Executing Court, namely, Mr.John Bino has already been appointed as Judicial Officer. Hence, the said order requires modification.

3. Heard the learned counsel for the petitioners as well as the learned counsel for the respondents.

4. The petitioners herein have got a decree for recovery of possession in the year 2000 and it was slightly modified by the first appellate Court and a decree was passed on 31.01.2002. The petitioners have filed an Execution Petition in E.P.No.46 of 2002 and the same is pending. In order to find out the actual encroachment made by the defendants/judgment debtors and to remove the said encroachment and to hand over the possession of the property, the Advocate Commissioner along with Surveyor and the Court Amin are required to inspect the suit schedule properties. However, there seems to be a dispute between the parties with regard to extent of the encroachment alleged to have been made by the defendant. Some other Advocate may be appointed as Advocate Commissioner. He has to strictly follow the decree that has been passed by the first appellate Court in A.S.No.38 of 2001, which is reflected in the plan annexed to the decree of the said appellate Court.



5. Considering the facts and circumstances of the case, this Court confirms the order of appointment of the Advocate Commissioner to note down the encroachment and for removal of encroachment. However, the trial Court is directed to appoint some other person in the place of Mr. John Bino as Advocate Commissioner and complete the said exercise within a period of three months from the date of receipt of a copy of this order. The Executing Court is directed to report the completion of the said exercise immediately after a period of three months. The Advocate Commissioner shall be accompanied by a Surveyor.

6. With the above said directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

gbg

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The I Additional District Munsif,
Nagercoil.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V. RAGHAVACHARI, Advocate (SR-17590[F] dated
08/04/2022)

+1 CC to M/s.R. MANIMARAN, Advocate (SR-17062[F] dated 07/04/2022)
C.R.P(MD)No.621 of 2012

06.04.2022

MGJ(22.04.2022) 3P 6C

<https://hcservices.ecourts.gov.in/hcservices/>